

Page 140

1 go up because there's an older population.

2 Q And how do you get that conclusion?

3 A Look at the nonmalignants, a few pages
4 earlier than where you just were. Look for the
5 column that has nonmalignants. It's the group
6 called "average settlement."

7 Q By the way, are these settlements after
8 you've redistributed the unknowns according to your
9 matrix?

10 A No. We don't redistribute unknowns for
11 resolved claims.

12 Q So we're looking in the nonmal, I think
13 '92 to look at again, and you're showing for the 92,
14 your computation is that for under 60 the amount is
15 4,529 versus 5,623. Did I read that right?

16 A Yes; that's correct. In the prior year,
17 the pattern was reversed.

18 Q Yes. It seems to be reversed actually
19 in -- in the earlier years, '86 through '88, the
20 under 60 average is higher than the 81 and over
21 average; isn't that true?

22 A That's true.

23 Q And by '97, it happens to reverse again in
24 '97, isn't that right, that the under 60 averages is
25 higher than the over 80 average?

Page 141

1 A Yes, but it's lower than the people in
2 their 70s or even 60s. There, the age effect is
3 pretty flat, tending somewhat probably higher in the
4 older people with the people over 80 not having the
5 most.

6 Q Can you explain why the average is dropped
7 down between '97 and '98 in your computation?

8 A I think it's because in '98, there were a
9 large number of settlements for cases that weren't
10 filed previous -- that either had been recently
11 filed -- Georgine had just been overturned by the
12 Supreme Court in the middle of '97. Over the next
13 18 months, lots of claims were filed, and I believe
14 a lot of them were settled.

15 Q You think '98 is a bigger year?

16 A It's certainly bigger than '97. If you
17 turn two pages earlier, there's a lot of information
18 in this, Ralph. That's one of the reasons it's
19 reprinted. If you look at the table that just
20 says "settlements," these are the number of cases
21 that were settled. Positive settlement is the
22 number that were settled with money.

23 That's probably actually the better one to
24 look at and if you look at the row '97, for year
25 '97, there were a total of 6576 nonmalignant claims

Page 142

1 settled in 1997. That's the full right-hand column,
2 6576. The next two years, there were almost 40,000
3 claims resolved each year. So you had a huge influx
4 of claims and a large increase in settlements in '98
5 and '99. A lot of those were group settlements
6 settled for a low amount of money.

7 Q What do you mean when you say there's a
8 lot of information in here?

9 A I just gave you an illustration of that.
10 I'm sure it will be a potential opportunity for
11 cross-examination.

12 MR. MILLER: Why don't we take a break for
13 lunch.

14 VIDEO OPERATOR: We're off the record.
15 The time is approximately 1:18 p.m.

16 (Whereupon, at 1:18 p.m., the deposition
17 was recessed, to be reconvened at 2:00 p.m. this
18 same day.)

19
20
21
22
23
24
25

Page 143

AFTERNOON SESSION (2:04 p.m.)

2 Whereupon,

MARK A. PETERSON

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as
6 follows:

7 VIDEO OPERATOR: We are back on the
8 record. The time is approximately 2:03 p.m.

EXAMINATION (Continued)

10 BY MR. MILLER:

11 Q Dr. Peterson, do you have anything you
12 want to change or correct from the morning testimony
13 that you know of?

14 A Nothing I can recall now, no.

15 Q Going back to Exhibit 3 for a moment.

16 A Exhibit 3, oh yes, the opinion.

17 O The new materials that we received --

¹⁸ A That's Exhibit 2.

19 Q I'm sorry, I misspoke. Exhibit 2, then,
20 is what I wanted to go to.

21 A Yes.

22 Q Where did you get the age of the claimants
23 in this document that shows ages, the first one, I
24 guess?

25 A I think we had it in the database.

Page 144

1 Q Did you cross-reference any other
2 databases to get the age, or do you know?

3 A I think it was just -- it's my
4 recollection it's just the GAF data. If that turns
5 out -- I'll double-check and get back to you if it's
6 different.

7 Q I don't want to mislead you. Let me just
8 tell you that we're having trouble find the age in
9 the existing database and wonder if a
10 cross-reference was done to some other database to
11 get age. You don't happen to know that --

12 A I will let you know. I believe it wasn't
13 and I asked Dan. Dan is on his way to Florida right
14 now. I'll ask him, and we could send you that
15 variable with some identifying thing you can link it
16 in so you can use it.

17 Q We'd appreciate that.

18 A Sure.

19 Q Did you in any part of your work in this
20 part of the case cross-reference the Manville
21 database for any purpose?

22 A I don't believe so.

23 Q It is possible, of course, to use Social
24 Security numbers from, say, the GAF database and go
25 out and get information on those same Social

Page 145

1 Security numbers in something like the Manville
2 database; is that correct?

3 A One can do that.

4 Q And in this case, you were actually
5 working with a CCR database in most instances; isn't
6 that true?

7 A It was a database created by CCR, yes.

8 Q Was there a separate GAF database on the
9 CCR data that you had to work with in this matter?

10 A There was another database that was
11 provided, I believe, that was attached to one of the
12 earlier filings in this case, court filings, and it
13 was a CCR. It had data not only about the amount
14 paid by GAF, but also by CCR as a whole.

15 Q And did you understand that that was
16 generated by GAF as opposed to by CCR?

17 A My understanding is these are all CCR
18 databases, both of them, but they were provided by
19 GAF. And beyond that, I don't know. It's my
20 understanding that the GAF -- that the CCR data is
21 confidential. We were surprised and delighted to
22 get it.

23 Q Did you -- why were you surprised and
24 delighted to get it?

25 A Well, because we didn't otherwise have

Page 146

1 data on CCR payment amounts. They had been kept
2 confidential.

3 Q Why did you decide to break these age
4 groupings down at 60, 70, 80, as opposed to, for
5 example, 60 to 65, 66 to 70, 71 to 75, and so on?

6 A If you disaggregated it further, you'd
7 begin to run into small amounts of data, and you
8 would get not only small amounts of data, but you'd
9 get more variability, and patterns might be harder
10 to look at.

11 Q Why did you look at 0 to 60 as opposed to,
12 say, 0 to 55, 55 to 65, 65 to 74, and so on?

13 A These were approximately decades, and 0 to
14 60 was just -- 0 to 60 is effectively 50 to 60,
15 because there are very few people that are less than
16 50. But both top and bottom categories are
17 open-ended. There aren't many people beyond the
18 10-year period at the top or bottom.

19 Q Did you perform any regression analyses in
20 connection with your work on -- reflected in Exhibit
21 2?

22 A No. We just -- these are just -- no.

23 Q Did you perform any regression analyses
24 with regard to anything you did in your report in
25 this case?

Page 147

1 A We might have done some early preliminary
2 regressions. I seem to recall we did. But we
3 haven't reported on any.

4 Q Did you use the results of any of your
5 regression analyses in your report?

6 A No.

7 Q Why didn't you do regression analysis to
8 see if age was statistically significant?

9 A As you saw, the data are frequently
10 nonlinear. So a linear regression analysis wouldn't
11 necessarily capture what the trend is. Secondly, we
12 just did this on a quick basis prior to the
13 deposition. And third, both our report and
14 Dr. Martin's report reported the data in the
15 cross-tabular version that we have here.

16 Q Do you recall in the Owens Corning work
17 that he did, that Tom Vasquez ran regressions to try
18 to determine whether their age was significant or
19 not?

20 A He did run some regressions, yes.

21 Q Do you recall that he determined some of
22 the break points were not at even ages?

23 A I don't know how you determine that in any
24 reliable manner.

25 Q Pardon me?

Page 148

1 A I don't know how you determine that in any
2 reliable manner. There's another reason we didn't
3 run the regressions, because these are skewed
4 distributions.

5 Q What is a skewed distribution mean as
6 you've used it in that answer?

7 A It's not symmetrical around the median or
8 the mean. It tends to go far off in the direction
9 of high values, and the regression analysis isn't
10 particularly appropriate when your underlying data
11 does not have -- it moves significantly away from a
12 normal distribution, just because of the nature of
13 regression analysis and correlation analysis. So in
14 order to correct for that, you would need to
15 essentially transform your data to get a more normal
16 database. Usually -- we've done this -- we haven't
17 done this in asbestos cases, but we've done it in
18 other kinds of data analysis. When you transform
19 it, you then lose the impact of the most extreme
20 large verdicts.

21 And to some degree, I think that's what's
22 happening in meso. The reason that meso has a
23 pattern is it's not representative of the general
24 pattern of settlements for meso but a reflection of
25 a few large cases. We've seen in other cases that

Page 149

1 the -- that the consistently, the medians, the 50
2 percentile, are higher at one age even for
3 mesothelioma.

4 So regression is not -- it's somewhat
5 misleading. It was misleading. What made me think
6 of this was when I was thinking of Doctor Vasquez's
7 analysis. Regression analysis wasn't an appropriate
8 analysis there, and I don't think it's an
9 appropriate one here.

10 Q Why don't you go back to your answer where
11 you directed our attention to a group of years that
12 you said were not representative because, as I
13 recall, claims filings were down, in part, because
14 the plaintiffs' lawyers were concentrating on the
15 Manville filings. Do you remember that answer?

16 A I didn't say what you said.

17 Q That's not a very good summary. That's
18 one of the advantages to having the text now. Can
19 you identify for us that chart again so we can talk
20 about it where you've pointed out a group of years
21 that you said were not representative?

22 A g3 is the document, the two-page document
23 that's the beginning in Exhibit 2, has g3 in the
24 upper left-hand corner. It's page 2 of 2.

25 Q I don't have a g3, I don't think, do I?

Page 150

1 A If you give it to me, I'll find it for
2 you.

3 Q Thank you.

4 A Actually, it's the second page.

5 Q I see. g3 is in the upper left-hand
6 corner; right?

7 A Yes, that's correct.

8 Q It has 8/08/05 as a date?

9 A Yes; that's correct.

10 Q And we were looking at the -- I guess we
11 were looking at the nonmal column, the nonmal
12 disease.

13 A Yes.

14 Q And looking at the column marked zero, you
15 were saying that you thought '88 and '89 were the
16 diagnosis year filings were down because of what?
17 Could you repeat that for us again?

18 A It isn't the filings are down, but there's
19 a lower percentage of claims for the period of
20 essentially 88 through 90 where it's the lowest.
21 The percent of claims, nonmalignant claims filed in
22 years '88 through '90 were lower than any other
23 period of time. And indeed, the period of time from
24 '87 to '91 were lower than any other period of time.

25 Q When did the CCR begin to operate?

Page 151

1 A CCR began in 1988, '88, yes.

2 Q Did you do any analysis to figure out
3 whether the creation of the CCR might have affected
4 these rates?

5 A Could have. Let me think about that a
6 moment. Could have, because during the -- although
7 it was three years that they were going down, I
8 think it probably had something to do with
9 priorities of activity on the part of the
10 plaintiffs' lawyers. Remember, the filings of
11 claims are a function of the activities of
12 plaintiffs' law firms primarily, and especially many
13 for nonmalignant claims, which may get filed at
14 different times with different defendants. Each law
15 firm has a limited capacity of paralegal talent to
16 do work. So they have to choose who they're going
17 to send their claims to.

18 In this period of time, one, you had
19 Manville coming out where it was important to get
20 early in the FIFO queue. And, second, you had this
21 new CCR being formed where there probably wasn't as
22 much urgency to get filed with CCR because it's
23 going to take them some time to get up and running.

24 So if you're a plaintiffs' lawyer and you
25 have limited resources and it's important to get as

Page 152

1 far ahead in the line in Manville as you could,
2 you'd send your claims to Manville, not to CCR.

3 Q First of all, have you done any analysis
4 to support that conclusion?

5 A There's a whole lot of conclusions in that
6 statement. Which one are you talking about?

7 Q Well, first of all, to support the
8 conclusion that you think that limited capacity in
9 the plaintiffs' law firms is the explanation for
10 this lower percentage of filing the same year of
11 diagnosis.

12 MR. FINCH: Object to form.

13 THE WITNESS: First of all, I know there's
14 a limited capacity of law firms. I've talked with
15 paralegals, and I've talked with law firms again and
16 again over the 20-some years of my work in asbestos
17 litigation. I've undertaken data collection
18 processes with plaintiffs' law firms. So I
19 understand their limits.

20 Secondly, I understand that plaintiffs'
21 law firms will tend to focus and direct their cases
22 to particular companies. I've seen that again as a
23 researcher, and I've seen it as a trustee, and I've
24 seen it as a director of trust services.

25 BY MR. MILLER:

Page 153

1 Q I think that's a little facetious. I
2 think someone sent me a note and said do you think
3 if the lawyers came back from the beach, they would
4 have more resources, based upon one of your earlier
5 answers. I will withdraw that question.

6 A They're tight with money. Let's put it
7 that way.

8 Q Legal assistants are one of the important
9 resources in plaintiffs' law firms in asbestos
10 litigation; isn't that true?

11 A Sure.

12 Q A lot of work can be done by legal
13 assistants to gather data and prepare materials;
14 correct?

15 A Of course.

16 Q If there was a significant economic
17 incentive to go ahead and increase capacity from an
18 economic standpoint, wouldn't it make sense for the
19 law firms to add temporary capacity and get things
20 done, rather than defer for a number of years
21 payments for their clients and for their own fees?

22 A Not necessarily.

23 Q Why not?

24 A Well, you can't hire temporary capacity.
25 There isn't a paralegal on the shelf service.

Page 154

1 Q Sure there is.

2 A No, there isn't. To get someone familiar
3 with the kinds of exposures and medical records and
4 processes in your office, you can't just go and hire
5 these people on a temporary basis, and they wouldn't
6 want to do so anyway because there are matters of
7 confidences in these cases.

8 Q Do you know how many temporary legal
9 services there are in the country?

10 A I have no idea.

11 Q So what is your analytic basis -- can you
12 point to any documents anywhere to say that the 24.7
13 number in 1988 on page g3, 2 of 2, has something to
14 do with limited capacity of the plaintiffs' law
15 firms?

16 A The document or the data that show the
17 results. These are anomalous years. For whatever
18 reason, they don't represent a general practice for
19 which '92 and '93 are abnormal. It's those earlier
20 years that are abnormal, which is precisely the
21 opposite of Dr. Martin's conclusions.

22 Q How many of the earlier years are
23 abnormal? Everything from 1980 through 1987?

24 MR. FINCH: Object to form.

25 THE WITNESS: You can look at the data

Page 155

1 yourself.

2 BY MR. MILLER:

3 Q Well, no, actually, I can't, Dr. Peterson.
4 That's the whole point, is that we're trying to
5 figure out how you look at the data. So I'm trying
6 to ask you my question. Let me restate it again.
7 Are you saying that the years from 1980 through 1987
8 are all anomalous -- I'm sorry -- yes, yes. Let me
9 start over. How many of the years prior to 1992 are
10 you saying are anomalous?

11 A I'm saying that the four years, really the
12 five years preceding 1992 represent the lowest
13 percent of claims that were filed in the year, in
14 the same year in which they were diagnosed. In
15 every other year, it was greater than that.

16 Q Those would be the most recent years if
17 someone were looking at the data as of 1993,
18 however; is that correct?

19 A No.

20 Q Well, '92, where there was a step-up in
21 '93, would be in the most recent years, and then if
22 you went back five years, for example, you go back
23 to 1989; right?

24 A The most recent years are 1992 and 1993.

25 Q My question wasn't very good. Let me try

Page 156

1 again. If one had gone back five years and were
2 just looking at this column marked zero, you would
3 see the years '89, '90, '91, '92, and '93? That
4 would be the five years of data available if it were
5 contemporaneous data as of 1993; right? As of 1994,
6 early 1994?

7 A Could you read that question, please?

8 Q Let me do it again. I garbled it up. In
9 early 1994, assuming you had complete data for 1993,
10 the five preceding years would be '93, '92, '91,
11 '90, and '89; true?

12 A Yes.

13 Q And if one were looking at these data, one
14 would see 24.2 for '89, 25.0 for '90, and 33.6 for
15 '91 in that five-year window; correct?

16 A And 46.3 in '92 and 42.2 in '93.

17 Q Right. So that would be three years that
18 were lower and two years that were higher in that
19 five-year window; is that correct?

20 A If you were looking at five years, you
21 would observe the numbers that are here, obviously.

22 Q And do you know whether anyone looked at
23 these data as of 1994 and concluded, or similar
24 data, that there appeared to be some acceleration of
25 filings in '92 and '93?

Page 157

1 A I have no idea.

2 Q Did you conclude at any point that there
3 might be an acceleration of filings because of
4 Georgine?

5 A Oh, I wrote that in my report. I
6 testified earlier today to that, that there was
7 likely that there was some acceleration of filings,
8 yes.

9 Q So --

10 A Some.

11 Q Have you tried to quantify how much?

12 A You cannot quantify something like that.

13 Q You cannot quantify?

14 A No, because essentially, you're comparing
15 it to a hypothetical. When would they have been
16 filed if you didn't have Georgine, and the world
17 isn't constructed that way.

18 Q Which way is the world not constructed?
19 That you can't compare to events that didn't occur?

20 A You can't observe something that didn't
21 occur. You can't count it. You can make inferences
22 and estimates, but you can't count it.

23 Q You have from time to time seen what you
24 would characterize as surges in some of the data; is
25 that true?

Page 158

1 A The only time I recall having testified
2 about that was in Fibreboard.

3 Q What did you testify about it in
4 Fibreboard, as you recall?

5 A You may regret asking this question. In
6 Fibreboard, I testified about a surge, a permanent
7 acceleration, a temporary acceleration, a number of
8 time-relevant events that happened with the --
9 essentially, the reaching of settlements between
10 Fibreboard and its insurance companies and the
11 settlement of lots of the pending claims prior to
12 filing of the Ahern class action, and the surge was
13 meant to describe the claims that were -- that would
14 not have otherwise been filed but were filed because
15 of those two events, the insurance settlement and
16 the negotiation of the several pending claims by
17 Fibreboard.

18 Q And that was an analysis where you looked,
19 for example, at certain law firms that had a history
20 of filing claims and new law firms that showed up
21 that did not have a history of filing claims; is
22 that correct?

23 A In that case, that's what it is, yes.

24 Q And you concluded that there were some new
25 filings that you would disregard because they seemed

Page 159

1 to be a part of the surge; is that correct?

2 A I don't recall that I disregarded them,
3 but I didn't regard them as being claims that would
4 likely be a basis for forecasting future claims.

5 Q You didn't think they were a long-term
6 trend?

7 A Barring some recurrence of something else
8 like this, I think that's probably a fair
9 description. They were predominantly maritime legal
10 claims.

11 Q That's what's sometimes known as the
12 Jacques law firm?

13 A Yes.

14 Q Did you do a sensitivity analysis where
15 you disregarded the nonmalignant filing rates in '92
16 and '93 in this engagement involving GAF?

17 A I didn't think it was appropriate to do
18 so, so I didn't do so.

19 Q Did you do an analysis in this engagement
20 where you used some sort of average filing rate from
21 1980 through 1993 rather than using the '92-'93
22 filing rates?

23 A I can't answer that question.

24 Q Why not?

25 A Because you've given me -- you've not

Page 160

1 given me -- your "rather" is not accurate.

2 Q Let's drop the "rather." Did you do any
3 analysis where you used an average rate of filing
4 for the nonmalignants that started in 1980 and went
5 through 1993?

6 A No.

7 Q What different time periods did you look
8 at for filing rates in your analysis in this case?

9 A For nonmalignant claims or for all claims?

10 Q Why don't you do both answers, please,
11 nonmalignants and then all claims.

12 A I think we looked at -- excuse me a
13 minute. We have two sections in the report where we
14 used derived claims, section 6 and section 7. I
15 think in section 7, we used the period 1996 through
16 1998, and in section 6, we used 1990 to '94. I
17 think we also looked at just the last -- I'm sorry,
18 1990 through 1993. I think we also looked at, but
19 I'm not certain, the period '92 and '93 by
20 themselves, and then the period '88 through '93.
21 They didn't give much different results for cancers.

22 For nonmalignants, I think we might have
23 looked at the periods -- I think we used the same
24 periods and examined them for nonmalignants in each
25 of the cases. What we reported is what I described

Page 161

1 at the beginning of this answer.

2 Q Where did you summarize what you looked at
3 for nonmalignants in your report, please, sir? You
4 seem to be looking at a page. I want to make sure
5 we're all looking at the same page.

6 A Sure. On page 29, the first paragraph.
7 Two-thirds of the way through the paragraph, "in the
8 GAF forecasts, I calculated the nonmalignant
9 multiplier with the same four-year base period, 1990
10 to 1999. " And then for -- and then in the next
11 paragraph, the first two sentences describes the
12 nonmalignant multiplier, calculating different
13 periods. That paragraph addresses that issue. So
14 using the period '90 to '93, we had 7.8 nonmalignant
15 claims for every cancer filing.

16 If we used '92 to '93 we would have had a
17 nonmalignant multiplier of 9.2. If we used the
18 period '98 to 1991, we would have had a nonmalignant
19 multiplier of 6.5. So you can determine what would
20 be the number of nonmalignant claims just by making
21 adjustments, either 9.2 divided by 7.8 would be the
22 number of nonmalignant claims if we used only the
23 last two years as the basis for our forecast. 6.5
24 divided by 7.8 would be the number if you used '98
25 through -- 1988 through 1991 as the basis for

Page 162

1 calculating the nonmalignant multiplier.

2 In section 7, I think we used the same
3 period as with the cancers, but let me confirm. I
4 believe we used '96 to '98 in section 7.

5 Q Where are you looking at?

6 A That's page 41.

7 Q And where on page 41?

8 A The bottom of page 41, I think, but let
9 me -- it describes 1966 to 1968. Let me verify
10 that's the period we used.

11 MR. FINCH: Did you mean to say 1996 to
12 1998?

13 THE WITNESS: Yes, I'm tripping over
14 numbers. 1996 to 1998. I believe that's what we
15 used, although I don't think it says it here. That
16 is the period we used for cancers, though.

17 BY MR. MILLER:

18 Q Let's go back to page 29 for a moment.

19 A Sure.

20 Q The paragraph to which you were referring,
21 which I guess is the second paragraph on the page --
22 I'm not clear on whether that first one is a partial
23 paragraph or not.

24 A It's a full paragraph.

25 Q Okay. There is a sentence in the middle,

Page 163

1 and let's see if I can read this right. "In effect,
2 this calculation assumes that, of the increase in
3 GAF's nonmalignancy claim filings during 1992 and
4 1993, about half represents the transitory effects
5 of the Georgine negotiations and about half
6 represents a long-term increase in filings of
7 nonmalignancy claims."

8 Did I read that right?

9 A Yes, you did.

10 Q What was your basis for making an
11 assumption that that was about half and half as
12 opposed to, say, one-third/two-thirds, 10 percent/90
13 percent?

14 A I'm describing what the effect of the
15 assumptions we did. I'm describing its effect. I'm
16 not saying that's the proper number a priori. But
17 we used 7.8 percent. The inflation -- the increase
18 rate or --

19 Q 7.8 percent or 7.8 times?

20 A 7.8 times. The actual observed ratio of
21 nonmalignant to cancer claims during this period is
22 9.2. Prior to this period of -- prior to 1992, the
23 ratio is 6.5. So you've got an increase of 2.7 --
24 it goes from 6.5 to 9.2.

25 So you're getting 2.7 more nonmalignant

Page 164

1 claims for each cancer claim if you use solely the
2 later period. We don't use that. We only use 7.8.
3 So rather than going up 2.7 additional nonmalignant
4 claims, we're only going up 1.3. So it's half the
5 difference between those two periods of time.

6 Q Do you have any sort of empirical analysis
7 to show why you went up any or that amount, other
8 than what's reported here?

9 A I think there's no empirical evidence that
10 says we needed to assume there's any acceleration.
11 There's no evidence of that. I think, though,
12 that -- my expectation is that the aversion that
13 some people have for the -- some plaintiffs' lawyers
14 and claimants have for the Georgine class action
15 would have caused people to file somewhat more
16 quickly.

17 So I think there needs to be some
18 consideration of a -- some recognition to some
19 degree that the large number of nonmalignant claims
20 filed in these two years are the result of attempts
21 to avoid being precluded in Georgine. So you need
22 to make some adjustment for it.

23 Q I think you recognized in 1994 that some
24 plaintiffs' lawyers didn't like the Georgine futures
25 settlement tables; isn't that true?

Page 165

1 A I just said it again, yes.

2 Q I'm saying but you recognized that in '94?

3 A Yes. I think most people did.

4 Q You also recognized in '94 that some
5 plaintiffs' lawyers didn't like the Ahern futures
6 settlement; right?

7 A Yes, although there were more things going
8 no Ahern than there were here, but that was a
9 consideration in Ahern.

10 Q Pleural plaques were not compensated under
11 Georgine on a contemporary basis after the
12 settlement became effective; isn't that true? I
13 probably didn't say that very well.

14 A The settlement never became effective.

15 Q Well, but the announced terms of the
16 settlement were such that a pleural plaque filed
17 after the effective date was going to be a deferred
18 payment; isn't that true?

19 A If the Georgine class action ever
20 became -- was approved, yes, that would have been
21 one of its effects.

22 Q But pleural plaques that were filed
23 earlier than that were going to be compensated
24 without a deferral; wasn't that true?

25 A In many states, not all, many localities,

Page 166

1 not all.

2 Q In those localities where the pleural
3 plaques were going to be compensated if they were
4 treated as pending claims, that created an economic
5 incentive for plaintiffs' lawyers to go ahead and
6 get any pleural plaque claims on file, didn't it?

7 A If they had them in those jurisdictions,
8 that would have been prudent. Well, it depends upon
9 what they thought was going to happen with Georgine.

10 Q Regardless of what they thought was going
11 to happen in Georgine, to protect their clients from
12 the contingency that Georgine came in if they didn't
13 opt out, it would be prudent for them to go ahead
14 and get it on file, wouldn't it?

15 A It would be a consideration, certainly.

16 Q When claims are accelerated, isn't one of
17 the expected consequences that in the following
18 years, notices claims, obviously, are not there to
19 be filed, so there is often a drop that is seen
20 after an acceleration?

21 A I agree with the first part. If a claim
22 is filed earlier, it can't be filed later. With
23 regard to the drop, this is just one of a number of
24 things going on at any one point in time. So all
25 things equal, yes, you would see it, but rarely in

Page 167

1 asbestos litigation are all things equal.

2 Q What do you mean rarely are all things
3 equal?

4 A Things are changing all the time.

5 Q There are multiple variables that are
6 shifting, is that correct, in these -- affecting
7 some of these events?

8 A Events are changing all the time.

9 Incentives of parties are changing over time. Lots
10 of things are changing. It's a dynamic litigation,
11 which is one of the reasons that you wouldn't want
12 to calculate filing rates for the period 1980
13 through 1993, because so much has changed over that
14 period of time.

15 Q I'm going to go back to futures agreements
16 for a moment and clarify some things that we talked
17 about before. Did you look to see what percentage
18 of the pending claims in 1994 against GAF were with
19 law firms that had a futures agreement of some kind
20 in place?

21 A No.

22 Q Do you have any idea as you sit here
23 whether that was 20 percent, 50 percent, 70 percent,
24 or somewhere in between those things?

25 A There were a number of -- I take issue

Page 168

1 with the term "futures agreement." Provisions of
2 agreements that CCR reached with law firms had
3 elements in them addressing future claims. I don't
4 believe that they were generally separate
5 agreements, as I testified this morning. Lots of
6 lawyers settled their inventory of pending claims
7 with CCR prior to the stay in the Georgine
8 litigation. So that would -- I'll just leave it at
9 that.

10 Q Let's define our term. First of all, do
11 you know if there were any stand-alone agreements
12 dealing with the future as opposed to inventory
13 settlements that included futures terms?

14 A I don't think I know of any. There may
15 have been. I didn't look at every agreement. But
16 where I've generally seen it is in the context of a
17 broader agreement.

18 Q Just to be sure we're all communicating
19 and a jury might understand what we're talking about
20 if we ever had to show this to them, what did you
21 mean by "inventory settlements" in your answer?

22 A It's a negotiation that leads to a
23 settlement where a law firm will settle all or most
24 of the claims that it then represents and that are
25 then pending against a particular defendant or, in

Page 171

1 that it represents who have nonmalignant diseases
2 that while it's filing lawsuits against Owens
3 Corning and Pittsburgh Corning and a bunch of other
4 companies, it would not file lawsuits against the
5 CCR members because of some agreement it reached
6 four or five years previously. That would be a
7 difficult, probably untenable position.

8 And finally, if they did take that
9 position and refused to do that or they told someone
10 when they were in an engagement situation that they
11 were only going to file claims against some subset
12 of defendants, most of those claims would go to
13 different law firms who would not feel -- either
14 were not parties to the agreements that have the
15 future provisions or would feel no obligation to
16 respect them.

17 And finally, I've never seen things like
18 this honored. It's wishful thinking on the part of
19 the defendants.

20 Q Do you believe that the plaintiffs'
21 lawyers who entered into these provisions did not
22 expect that they would ever have any effect?

23 A I have no idea what their expectations
24 would be.

25 Q You're not suggesting that the plaintiffs'

Page 172

1 lawyers intended to disregard the agreements, are
2 you?

3 A I have no idea what their intentions were.
4 I think their effect is that they would not be able
5 practically to do that, and if they did, the claims
6 would go elsewhere. If someone had a claim that was
7 compensable under the law and they were told by a
8 lawyer we're not going to do this because of some
9 agreement, I mean, if I remember a potential
10 plaintiff, I'd be out the door and go next door.

11 Q Do you think the plaintiffs in these
12 cases, in general, do or don't rely on the advice
13 they receive from the lawyers?

14 A Well, they hire them. They certainly rely
15 on them to some degree. I don't think they would
16 generally rely upon a lawyer who says well, you've
17 got the right to sue this person, but we're not
18 going to file a lawsuit because of some private
19 agreement I have. I don't think that that's
20 something that, if that's explained to the
21 plaintiff, that they would regard very highly.

22 Q Do you think the lawyers entered into
23 these agreements believing that they were going to
24 harm their clients? In the future?

25 A Maybe they felt they weren't going to

Page 173

1 represent those claimants, so that someone else
2 would. That's the easiest way to avoid that
3 conflict.

4 Q You mentioned before that one of the
5 advantages perceived by the supporters of the
6 Georgine settlement was faster payment for present
7 claimants. Do you recall that?

8 A That was -- that was a bargained-for
9 promise which, it's my understanding, wasn't very
10 well achieved.

11 Q Well, I think my question was whether that
12 was something that you thought that the lawyers
13 believed who were supporting the class action
14 settlement, was one of the advantages to their
15 clients, was faster payment than if they continued
16 to litigate in the tort system.

17 A I would say that it is something they
18 bargained for and felt that CCR owed them that
19 obligation. That raises another issue, thank you,
20 is that to the degree that CCR doesn't honor its
21 part of these contracts, that the plaintiffs'
22 lawyers, I'm sure, would have felt free to and maybe
23 even obligated not to respect these future
24 provisions.

25 Q Well --

Page 174

1 A There would be no pro quo for the quid.

2 Q Well, in 1994, there was no reason to
3 assume that either CCR or the plaintiffs' lawyers
4 were going to dishonor their contractual
5 commitments, was there?

6 A I think there was reason to believe that
7 CCR couldn't honor its contractual commitments or at
8 least that its contractual commitments were going to
9 create significant backlogs of unpaid claims.

10 Q Why is that?

11 A Because there would be too many claims
12 filed. They would run up against the caps, and
13 they'd have to go over to the next year and the next
14 year and the next year. The actual claims that
15 would be filed would have exceeded the caps. That
16 would have created -- I'm sorry. That's Georgine.
17 That's not in the futures agreements. I beg your
18 pardon.

19 Q Let me ask my question again.

20 A Thank you.

21 Q Do you have any reason to believe as you
22 sit here today that the -- that there was a reason
23 for people looking at these futures agreements to
24 believe that the plaintiffs' lawyers did not intend
25 to honor them, first of all?

Page 175

1 A I think that there's reason to believe
2 that the plaintiffs' lawyers would have had great
3 difficulty honoring them and that, in any event, it
4 wouldn't limit the number of claims that were filed
5 because there are always other law firms.

6 Q Can you point to anyone other than perhaps
7 yourself who was making that prediction in 19 --
8 January of 1994 or earlier?

9 A I don't know that anyone made a prediction
10 one way or another about it. I have not heard -- I
11 don't recall anyone discussing that one way or the
12 other. I think it's the reasonable expectation of
13 what would be the effect of these provisions.
14 They're not obligatory with regard to claimants.

15 Q In 1992, in the National Gypsum
16 testimony -- let me rephrase that.

17 Do you recall when your testimony was in
18 the National Gypsum trial?

19 A January 1993.

20 Q Right. In January of 1993, do you recall
21 what your assumptions were about case flows under
22 Georigine?

23 A Under Georigine?

24 Q Yes.

25 A Yes. It depended upon the forecast.

Page 176

1 There were 16 different forecasts or 32 different
2 forecasts, some enormous number of forecasts. I
3 remember Ms. Goldstein cross-examined me about that.
4 Essentially, under the forecast that involved a flat
5 propensity to sue, that the caps were generally
6 blown.

7 Under those that had a decreasing
8 propensity to sue, the caps -- the claims finds
9 could be maintained. These are claims filed by
10 National Gypsum. National Gypsum represented only
11 69 percent of all the claims filed against CCR. GAF
12 represented 91 percent of all the claims filed
13 against CCR.

14 Q 91 percent?

15 A 91 percent of all claims in the CCR named
16 GAF.

17 Q I understand.

18 A As opposed to 69 percent for National
19 Gypsum.

20 Q What's the significance of that
21 observation?

22 A It means that almost certainly, the caps
23 would have been blown but with the number of claims
24 filed against GAF.

25 Q Did you do an analysis by occupation in